

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

July 17, 2009

Thomas J. Owens  
SBI No.  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**RE: State of Delaware v. Thomas J. Owens**  
**Def ID No. 0607003633**

Date Submitted: April 15, 2009

Dear Mr. Owens:

This is my decision on your Motion for Postconviction Relief. The State of Delaware charged you with one count each of Continuous Sexual Abuse of a Child, Endangering the Welfare of a Child, Attempted Sexual Exploitation of a Child, two counts of Sexual Solicitation of a Child, and six counts of Unlawful Sexual Contact in the Second Degree. The charges arose out of incidents involving you and your wife's 15-year-old granddaughter. A jury found you guilty of Continuous Sexual Abuse of a Child, Endangering the Welfare of a Child, Sexual Solicitation of a Child and Attempted Sexual Solicitation of a Child. The Supreme Court upheld your convictions in a decision dated October 22, 2008.<sup>1</sup>

I sentenced you to eight years at Supervision Level V, suspended after four years at Supervision Level V for probation. This is your first motion for postconviction relief and it was filed

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<sup>1</sup> *Thomas J. Owens v. State of Delaware*, 962 A.2d 257, 2008 WL 4659801 (Del. Oct. 22, 2008)(TABLE).

in a timely manner. Michael R. Abram, Esquire, represented you at trial. Deputy Attorney General Adam Gelof, Esquire, represented the State. You allege that (1) Abram’s representation of you was deficient, and (2) the Court erred by not allowing Abram to properly cross-examine the victim. Abram filed an affidavit responding to your allegations. I have concluded that, given the unfounded nature of your allegations, a hearing is not necessary.

### **I. Ineffective Assistance of Counsel**

You allege Abram was ineffective because he (1) failed to conduct pretrial discovery into the victim’s previous claims of sexual abuse, and (2) did not object to the introduction at trial of sexually explicit pictures that were found on your home computer. The United States Supreme Court has established the proper inquiry to be made by courts when deciding a motion for postconviction relief.<sup>2</sup> In order to prevail on a claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, the defendant must engage in a two-part analysis.<sup>3</sup> First, the defendant must show that counsel’s performance was deficient and fell below an objective standard of reasonableness.<sup>4</sup> Second, the defendant must show that the deficient performance prejudiced the defense.<sup>5</sup> Further, a defendant “must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.”<sup>6</sup> It is also necessary that the defendant “rebut a ‘strong presumption’ that trial counsel’s representation fell within the ‘wide range of reasonable professional assistance,’ and this Court must

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<sup>2</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>3</sup> *Strickland*, 466 U.S. at 687.

<sup>4</sup> *Id.* at 687.

<sup>5</sup> *Id.* at 687.

<sup>6</sup> *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

eliminate from its consideration the ‘distorting effects of hindsight when viewing that representation.’”<sup>7</sup>

### **A. Pretrial discovery**

You allege that Abram was ineffective because he did not investigate whether the victim had falsely accused another man of sexual abuse in order to get her way. This allegation is based on your belief that the victim, while living in New Jersey, made false allegations of sexual abuse against another man so that she could return to Delaware. Your allegation is unfounded. Abram was aware of the incident in New Jersey. The victim had discussed this during her interviews with the Child Advocacy Center and Laurel Police Department. Abram had the information from these interviews. The record indicates that Abram discussed this matter extensively with Gelof and the Honorable T. Henley Graves during a pretrial hearing on some discovery issues in this case.

You also allege that Abram should have cross-examined the victim about the incident in New Jersey. Abram considered doing this, but did not do so because there was no way to establish that the victim’s allegations were false. The state of New Jersey had brought charges against the man identified by the victim as having sexually abused her. The man was a convicted sex offender and the charges against him were pending at the time of your trial. Thus, at the time, there had been no determination by anyone that the victim’s allegations were false. Abram’s decision not to pursue this irrelevant line of questioning was appropriate and reasonable.

### **B. Computer pictures**

You allege that Abram was ineffective for not objecting to the admission at trial of pornographic pictures found on your home computer. Your allegation is unfounded. Abram

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<sup>7</sup> *Coleman*, 2003 WL at \*2, quoting *Strickland*, 466 U.S. at 689.

strenuously objected to the admission of the pictures.<sup>8</sup> I ruled, over his objection, that a representative sample of the pictures could be admitted into evidence.<sup>9</sup> Moreover, the Supreme Court has already ruled on this matter, finding that I did not abuse my discretion when I admitted the pictures into evidence and showed them to the jury.<sup>10</sup>

## **II. Court Error**

You allege that I committed an error of law when I allegedly prevented Abram from cross-examining the victim about the incident in New Jersey, thereby denying you of your right to confront and cross-examine the victim. Your allegation is not supported by the record. I did not prevent Abram from doing this. He decided not to cross-examine the victim about this. Moreover, if you thought that I had improperly limited Abram's cross-examination of the victim, then you could have challenged my decision on appeal. You did not do that. Your failure to do so, without explaining why you did not do so, prevents you from raising this claim now.<sup>11</sup>

## **CONCLUSION**

Your Motion for Postconviction Relief is denied for the reasons set forth herein.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

Original to Prothonotary  
cc: Adam D. Gelof, Esquire  
Michael R. Abram, Esquire

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<sup>8</sup> Transcript at B-25.

<sup>9</sup> Transcript at B-197-198.

<sup>10</sup> *Owens v. State*, 962 A.2d 257, 2008 WL 4659801, at \*2 (Del. Oct. 22, 2008).

<sup>11</sup> Superior Court Criminal Rule 61(i)(3).